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COMMISSION ON HUMAN RIGHTS

Forty-seventh session

SUMMARY RECORD OF THE 30th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 February 1991, at 3 p.m.

Chairman: Mr. BERNALES BALLESTEROS (Peru)

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(a) Torture and other cruel, inhuman or degrading treatment or punishment;

(b) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) Question of enforced or involuntary disappearances (continued)

The meeting was called to order at 3.30 p.m.

STATEMENT BY THE MINISTER IN CHARGE OF HUMAN RIGHTS AND SPECIAL ADVISER OF THE POLITICAL COMMITTEE OF THE REVOLUTIONARY COUNCIL OF SUDAN

1. Mr. ABED AL SAMIE OMER (Minister in Charge of Human Rights and Special Adviser of the Political Committee of the Revolutionary Council of Sudan) said that it was appropriate to express of sympathy for the misfortune which had befallen the Chairman's country of origin, Peru, and that it was the duty of the entire international community to provide humanitarian aid to the victims of that terrible epidemic.

2. He had attended the previous session of the Commission which had been held one year after the completion of the June 1989 revolution in his country. He had attended not merely in order to fulfil an agreeable duty, but because he considered the Commission's task to be an honourable one, a task in accordance with the Charter of the United Nations and which reflected its purposes and principles.

3. He represented a society which viewed such actions as fitting and in which all laws were respected, particularly those concerning equality. The right to equality must be demanded for others and not merely for oneself. The leaders of the revolution in his country had not turned their backs on such values and they did not act merely in imitation of others. Some persons did not wish to grant the enjoyment of such rights to others, and that was why his country was fighting its enemies and why it had rejected their arguments.

4. Delegations were gathered at the current session because of their hope that the Commission would be able to lift mankind out of oppression and to establish a climate of humanity and tolerance. The Commission had been entrusted with a very important task, and its success depended upon the will of countries to respect and consolidate the rights of peoples and to co-operate in creating a better world - a world in which the Commission and other bodies would have sufficient credibility to be able to put an end to all the campaigns being waged by some against others.

5. The Commission's objectives had been formulated following the Second World War when the United Nations had been established. One of the principles upon which it had been founded was the freedom of the individual. The Charter had recognized the equality of rights for all individuals throughout the world, and those rights had been embodied in various international instruments. Human rights had become essential for the realization of political, economic and all other rights, and they must be protected by the international community.

6. In speaking of the international community, he meant all countries, irrespective of religion, culture, traditions, race and the like. Co-operation implied the recognition of such differences; otherwise, there would be no reason for dialogue. The objective of the current session should be to create the proper conditions for examining the right of peoples to co-exist through dialogue, following years of failure.

7. Once again a situation of war existed, bringing with it the denial of certain rights and mass destruction, negating everything which had been achieved thus far. It was necessary to make a choice, and he firmly hoped that the Commission would achieve what it had set out to do.

8. Sudan was prepared to co-operate with the Commission, and his Government had taken a number of steps to improve the human rights situation within the country. It was important to be realistic however: the security and economic situation in Sudan had deteriorated, and the state of war had led to the destruction of the country's potential. It had therefore been necessary to take exceptional steps to protect the population and to build confidence. That period was drawing to a close.

9. Most political prisoners had been released; in that connection, his Government had sent a detailed list with the names of political prisoners released, but it had not been referred to by the Special Rapporteur on the subject who, for his part, had provided a list of inaccurate names. It was to be hoped that the Commission would correct that mistake; his Government was prepared to make the list available immediately.

10. Trade unions were operating normally, and effective mechanisms had been instituted for involving the population in the political process. The revolution had brought about a number of improvements in the human rights situation. For the first time, it had opened all areas to women. New judges had been appointed to improve the legal system and to consider issues that had been ignored in the past. Legislation had been changed to give all citizens the right of appeal.

11. The 1991 Criminal Code prohibited torture and contained special guarantees to protect the rights of minors and the elderly. Emergency legislation did not exist, but laws were applied to ensure the national security and to protect the legal system itself. His Government was open to suggestions on ways to improve the human rights situation.

12. His Government had started a dialogue with the rebel movement on ending the war in the southern Sudan. In that context, it appreciated the peace proposals made by Uganda, Kenya and Zaire. A high-level committee had been set up to co-ordinate and facilitate relief assistance from abroad. Steps had been taken to accredit NGOs and voluntary organizations.

13. A number of missions sent to Sudan to inquire into the human rights situation there had issued statements praising his Government's readiness to co-operate and acknowledging the release of all political prisoners. No restrictions had been placed on the visits made by the members of those missions, and the detainees they had questioned had stated that they had not been tortured.

14. With regard to the situation in the occupied Arab territories, his Government regretted that the Palestinian population there had been subjected to inhuman suffering. The international community must continue its efforts until the Palestinians enjoyed their full rights.

15. Sudan was pleased at the recent steps taken in South Africa to enable its brothers there to recover their rights. It was to be hoped that change would take place peacefully, and his Government was prepared to help. The international community must maintain its pressure on the minority Government of South Africa until apartheid was eradicated.

16. The people of Sudan hoped that the Gulf War could be settled in an Arab context and in such a way that it would not leave any open wounds. His

Government regretted the suffering of the peoples of Kuwait and Iraq. The death of civilians was not necessary to liberate Kuwait, which had not been spared savage destruction. To end the bloodshed, his Government urged restraint and a return to diplomatic efforts. Financial resources were being wasted that could have been used for development. It was to be hoped that peace would once again reign and that new steps would be taken to improve implementation of fundamental human rights.

17. The CHAIRMAN thanked Mr. Abed Al Samie Omer for his kind words concerning Peru and expressed his appreciation to the international community for the help it had extended to combat the epidemic currently threatening the lives of thousands of Peruvians.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (continued) (E/CN.4/1991/15-17, 19, 20 and Add.1, 49 and 66; E/CN.4/1991/NGO/4, 17, 19-22, 24 and 33; A/45/590 and 633; A/RES/45/142 and 143; E/CN.4/Sub.2/1990/11, 27, 29 and Add.1, 32, 33 and Add.1 and Add.2 and 34; E/CN.4/Sub.2/1989/30/Rev.2)

18. Mr. OFLOINN (Observer for Ireland) said that the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20) contained a noteworthy innovation, namely, annex I showing in graphic form the extent of disappearances throughout the world during the period 1973-1990. Not only did the accumulated case-load of the Working Group since 1980 amount to nearly 20,000 disappearances but, in the past year, a total of 987 new cases had been transmitted to Governments. The developing international consensus in favour of democratic values and human rights might indeed have contributed to an overall reduction in disappearances; however, his delegation very much shared the view of the Working Group that every single case of disappearance was one too many.

19. The Working Group had noted that there were currently few Governments which did not co-operate with its investigations. However, there again, one was too many.

20. His delegation noted with satisfaction that a number of Governments had recently invited the Working Group to visit their countries; the co-operation of the Government of the Philippines had been particularly impressive. At the same time, it was a matter of concern that the Working Group had reported the absence of follow-up on recommendations which had arisen from previous visits to other countries. He hoped that current and future invitations to the Working Group to visit particular countries would be accompanied by a real commitment to continuing dialogue and co-operation, with a view to eradicating the scourge of enforced disappearances.

21. Such abuses were compounded in many cases when the relatives and friends of the victim were themselves targeted for reprisals. He was particularly impressed by the provision made for urgent intersessional action by the Chairman of the Working Group and hoped that Governments everywhere would respond to cables from the Chairman in a spirit of humanitarian concern.

22. His delegation, which had consistently supported the allocation of increased resources from the United Nations regular budget to the Centre for Human Rights, noted with concern that the lack of staff and resources was a significant limiting factor.

23. He welcomed the extensive co-operation described in the report between non-governmental organizations and the Working Group, since the role of those organizations was vital in cases of disappearance. His delegation was aware of the growing concern among non-governmental organizations with regard to the problem of impunity, a problem which had been fully addressed in the report.

24. While his Government recognized the need for societies which had suffered under forms of authoritarian rule to promote reconciliation and to build democratic structures, it felt that the absence of legal redress for those affected by disappearances could itself be a significant obstacle to the establishment of a political system embodying respect for fundamental human rights. His delegation was therefore ready to discuss the issue of impunity with other delegations and interested non-governmental organizations with a view to promoting a consensus on the issue.

25. With regard to the draft declaration on the protection of all persons from enforced or involuntary disappearances, his delegation had been somewhat cautious in recent years about proposals for new human rights instruments owing to its conviction that there was a need to concentrate on implementing the provisions of the existing instruments. However, the draft declaration did indeed address the various components of the problem under consideration and represented a beacon of hope to the friends of missing persons in many parts of the world. Accordingly, his delegation would follow the Commission's consideration of the draft with particular interest and in the expectation of a positive outcome.

26. Mrs. ABOUL-EZZ (Observer for Egypt) said that agenda item 10 was a very important one because it related to issues such as the achievement of justice for peoples. That issue, which was closely related to the promotion and protection of human rights, required all peace-loving and democratic States to co-operate in eliminating all obstacles to the further advancement of States. The citizens of all countries would be able to make a greater contribution when they felt secure with regard to their current and future progress.

27. Her Government, owing to its belief that the right to freedom and security was an inalienable right, had adhered to all the international instruments which promoted and protected that right. The Egyptian Constitution contained provisions affirming that all citizens were equal before the law and had equal rights and responsibilities.

28. In order to promote justice, her Government had, in 1986, adhered to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its provisions had become part of the applicable law of her country. She urged all States that had not yet done so to adhere to the Convention with a view to rendering it universal.

29. Believing as she did in the necessity of assuming collective responsibility for putting an end to torture, she appealed to all States to support the United Nations Voluntary Fund for Victims of Torture. The contributions so far received by the Fund had been insufficient to fulfil its objectives, which were to extend aid to victims of torture and to provide the medical care necessary for their rehabilitation.

30. Turning to document E/CN.4/Sub.2/1989/Rev.2, she agreed with the Special Rapporteur that it was necessary to draw up standards and criteria applicable to states of emergency, as such procedures could play a positive role in protecting human rights at the national level. Under certain difficult circumstances, Governments might be obliged to have recourse to states of emergency in order to safeguard national security and protect their citizens against an internal threat.

31. However, some Governments, using the pretext of special situations, employed arbitrary measures against their civilians, such as the curfew currently being imposed by the Israeli authorities against the Arab inhabitants of the occupied territories. She rejected such measures, which made it extremely difficult for the inhabitants to meet their daily needs, and also drew attention to a new detention camp established by the Israeli authorities, Ansar IV, where thousands of people were imprisoned.

32. Ms. ERAZO (World University Service) said that her organization was deeply concerned at the fact that cases of torture and enforced disappearance continued unabated in Guatemala. During the past 28 years, according to human rights groups, more than 42,000 persons had been abducted and had vanished for ever. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20) showed that Guatemala ranked as the third worst offender in the world for 1990, accounting for 14.5 per cent of all disappearances in that year. Guatemala was also the country with the highest number of outstanding cases of disappearance. That was evidence that the Cerezo Government had done nothing to investigate the fate of the disappeared persons, despite multiple promises to national and international non-governmental organizations, as well as to the Commission and other United Nations bodies.

33. Her organization, together with many other non-governmental organizations, had insisted for three years on the need for a special rapporteur on Guatemala, because the current treatment of the case had proved inadequate. The situation of human rights and fundamental freedoms in Guatemala had deteriorated during that period, and she therefore urged the Commission to reconsider that request.

34. The situation in El Salvador was equally alarming. Despite the negotiating process between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí National Liberation Front), which was being conducted under the auspices of the Secretary-General, grave human rights violations continued. From July to October 1990, there had apparently been a decrease in the number of disappearances perpetrated by the "death squads"; after that period, however, the number of victims had once again increased.

35. More than 100 political prisoners remained in Salvadorian gaols, and physical and psychological torture continued to be a common practice, in violation of the Agreement on Human Rights signed by the parties in July 1990. She urged the Commission to appeal to the parties to implement as soon as possible the provision of that Agreement concerning the release of political detainees.

36. In Colombia, the problem of enforced disappearances had increased during 1990. The right of habeas corpus, which was considered a key instrument for addressing the problem of involuntary disappearances, had been further eroded by the promulgation of Decree Nos. 2790 of 1990 and 99 of 1991. The problem could be substantially reduced if the Commission insisted that the Colombian authorities comply with its recommendations.

37. In Honduras, 96 persons had reportedly been tortured in 1990. Constitutional guarantees had been totally ineffective since 1982.

38. In the case of Western Sahara, as a result of the occupation of the territory by Morocco, hundreds of men, women and children had been confined in detention centres and subjected to the most inhuman conditions. In the past two months, a number of students had been deported to the interior of Morocco and no news had been received of their fate.

39. Mr. OLIVERO (International Organization for the Development of Freedom of Education) said that although the analysis by the Special Rapporteurs Mr. Türk and Mr. Joinet (E/CN.4/Sub.2/1990/11) was very much to the point, it had regrettably been limited to articles 19 and 20 of the International Covenant on Civil and Political Rights and had not included freedom of education, which was so closely interrelated with freedom of opinion and expression that it was difficult to imagine one without the other.

40. The recent events in Central and Eastern Europe had demonstrated that freedom of education and freedom of opinion were equally essential for building democracy. His organization had had many contacts with the civil and political movements in those countries. It had organized a symposium at Geneva in October 1990 on the relationship between democracy and freedom of education in the countries of Central and Eastern Europe. At that meeting, a senior official of the Polish Ministry for Education had stressed that freedom of education and democracy were inseparable.

41. In order to have true freedom of opinion and expression, it was essential to promote freedom of education, because the temptation to use education as an instrument of indoctrination was very great and was not limited to totalitarian régimes. Pluralism of ideas could not exist if citizens were subject to controls starting in early childhood. Education must not become an instrument of power. To that end, it was important for the Commission to focus on the relationship between freedom of opinion and expression and freedom of education.

42. Mr. KARUNAN (Pax Romana) commenting on the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20) said that torture and disappearances in many countries were directly linked to the militarization of the State and its forces of law and order. In countries like Peru, Colombia and the Philippines, the victims were the particularly vulnerable sectors of the population: the poor peasants, tribal and indigenous peoples, women and

children. The previous year, a Peruvian Member of Parliament had testified on behalf of Pax Romana that one paramilitary group had been proven responsible for innumerable death threats, disappearances and killings in Peru.

43. Paragraph 410 of the report stated that a pardon or amnesty was justified on political and national security grounds or in terms of national reconciliation or peace efforts. His organization questioned whether peace without justice was a real peace.

44. Mr. JAYATILAKE (Pax Romana) said that, during 1989 and 1990, the people of Sri Lanka had witnessed mass killings, abductions and disappearances and most of the victims of those gruesome and violent deaths had been poor people from the rural areas. Amnesty International had reported over 2,000 cases of disappearances in 1990, whereas the report of the United Nations Working Group on Enforced or Involuntary Disappearances had transmitted complaints of 1,182 cases to the Sri Lankan Government. A fact-finding mission of the European Parliament and two lawyers, who had visited Sri Lanka in September 1990, reported the following month that they had received reports of over 60,000 cases of disappearances in the south of the country alone, since 1987.

45. The cases of the abduction and murder of the journalist Richard de Zoysa and the abduction of Mr. K. Kugamoorthy, a human rights activist were but two of the thousands of cases of abduction, murder or simple disappearance. Although the President had announced the appointment in January 1991 of a Commission to investigate disappearances, its mandate was dated from 11 January 1991, and the thousands of cases prior to that date would not be investigated.

46. The continuing state of emergency in Sri Lanka permitted the restriction and violation, with impunity, of fundamental rights, such as the rights of workers and students to organize. In recent months, the police and State officials had begun conniving with factory owners to harass and intimidate workers.

47. The emergency regulations permitted the indefinite detention of suspected subversives. Thus, thousands of youths had been detained and many were denied access to their families or lawyers, in defiance of court orders. There had been attempts by the police to intimidate persons who had filed cases against illegal detention and torture. Prison conditions were also a matter of concern. The emergency was also used to disperse anti-Government demonstrations, even peaceful ones and the attitude of the President himself, who was quoted as giving the security forces a free hand under the emergency to implement measures to restore peace, left little room for hope that the security forces would make much effort to defend the right to life of the citizen.

48. In conclusion, his organization urged the Commission to support a process which would lead to the cessation of military hostilities and to a negotiated political settlement of the ethnic conflict in Sri Lanka, as a pre-condition for the restoration of peace and democracy. It appealed for the Commission's support to ensure that the visit of the United Nations Working Group on Enforced and Involuntary Disappearances to Sri Lanka would take place as scheduled in 1991 and for international pressure to be exercised on the Sri Lankan Government to publish a list of all detainees and to appoint an

independent commission of inquiry into disappearances dating from 1987 onwards. The international community's support would be crucial in deciding the future of the country.

49. Mr. RIETJENS (Belgium) said that, given the paramount importance of the right to life, liberty and security of person as reflected in the vast number of instruments drafted on the subject over the last 40 years, as well as the long list of issues to be discussed under agenda item 10, it was surprising that the Commission was devoting so little time to such a vast problem. As the chief body of the United Nations dealing with human rights, it should spend more time on seeking ways of protecting the human dignity of all detainees and prisoners, who were much more vulnerable to arbitrary action.

50. Another unfortunate observation which he had to make was that, while there were only the two days allocated to consideration of all those questions, the supporting documents appeared in all the working languages only at the very last minute and sometimes even after the debate had ended. The Centre for Human Rights obviously needed to be provided urgently with more means and staff. The hard work and good will of the members of the secretariat servicing the Commission were no longer sufficient.

51. The Special Rapporteur on torture had demonstrated his competence and his impartiality. His method of work had been to examine all allegations carefully, in accordance with certain criteria, to determine whether or not they were true but, as he had pointed out, only an inquiry duly carried out by the State in question could verify or refute such allegations. The fact that the Special Rapporteur transmitted an allegation or made an urgent appeal to a Government should not be regarded as an accusation.

52. It was, on the contrary, the failure to reply to the Special Rapporteur's requests for clarification that could cast a shadow of guilt upon a Government. The Governments approached should thus realize that the more they co-operated with him by providing accurate information in answer to his inquiries, the better chance they had of clearing themselves of any suspicions of complicity.

53. His delegation realized that some situations were so complex that a certain delay in replying was justified and that the absence of a reply to the Special Rapporteur thus did not automatically mean a refusal to co-operate with him. While the number of Governments that had replied in 1990 had significantly increased, his delegation was concerned about those which had not done so or which had given only partial or incomplete replies. If a Government suspected that the allegations made were designed merely to smear it, it had only to invite the Special Rapporteur to conduct an inquiry himself.

54. After six years of work, the Special Rapporteur had observed that torture was still continuing to spread throughout the world. The international campaign against that ignominious practice should continue but the main work would have to be done at the national level, and that was primarily the task of Governments. If Governments felt they were not in a position to combat torture effectively, they should ask the international community for help, for example through the advisory services of the Centre for Human Rights. The Special Rapporteur was also prepared to assist Governments in eradicating torture and had expressed the wish that Governments would continue to invite him to visit their countries.

55. That welcome development had begun in 1987, when the Governments of Argentina, Colombia and Uruguay had invited the Special Rapporteur to visit their countries, followed by the Governments of Peru, the Republic of Korea, Turkey, Zaire, Guatemala, Honduras and the Philippines. He had, quite recently, been invited by the Government to visit Indonesia in 1991. Those initiatives were to be appreciated and emulated.

56. Such visits were only of value, however, if the Governments of the countries visited heeded the advice they were given. In that connection, he noted that the Governments of the Republic of Korea and Turkey had responded to the recommendations and that the Government of Zaire had also provided information on the steps taken subsequent to the Special Rapporteur's visit. He hoped that the other States concerned would follow suit and that responses from the Governments of Peru, Guatemala, Honduras and the Philippines would shortly be forthcoming.

57. Prevention was the key to eliminating torture and was the underlying theme of most of the Special Rapporteur's general recommendations, (E/CN.4/1991/17, para. 303) many of which he had already made in previous reports. For example, it was recommended that incommunicado detention should be declared illegal. Although some States - including his own - were reluctant to abandon the practice for reasons of security or even of the investigation process, his Government was prepared to consider whether alternative means could not be found of ensuring the same degree of security. His delegation supported the new recommendation that the blindfolding or hooding of detainees during interrogation should be absolutely forbidden.

58. Lastly, his delegation wished to highlight the recommendation by the Special Rapporteur that a treaty-based system of periodic visits by independent experts to places of detention should be established as one of the most effective means of preventing torture. In that connection, a draft optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1991/66) had been submitted for consideration by the Commission at its current session. The time had come for the international community to give serious consideration to that question, which had been postponed for far too long.

59. Such a system of visits, which would no more undermine the internal authority of a State than the inspection of nuclear plants by officials of the International Atomic Energy Agency, existed at the regional level. The Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had begun its work on 30 November 1989 and as stated in Commission resolution 1990/34 of the previous year, the experience of that Committee could make it easier to determine whether such a system of periodic visits could also be envisaged in other regions of the world or on a world-wide scale.

60. Moreover, the International Committee of the Red Cross (ICRC) had signed agreements with the States in question, under which it also visited detention centres. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders had recognized that the ICRC's visits could contribute to ending torture and disappearances and to the general improvement in the material and psychological conditions of detainees.

61. Thus the idea of periodic visits could no longer be regarded as a revolutionary one and his delegation would support any initiative to resume consideration of the draft optional protocol with a view to its early adoption.

62. Mr. WANG Xuexian (China) said that his Government had always been opposed to torture and China's laws not only forbade such a practice but took measures to prevent and investigate acts of torture. Under the Constitution of China, the Criminal Code and other regulations, a State official was forbidden to torture, threaten or use other unlawful means to obtain evidence. Public security officers were also forbidden to beat, maltreat or insult persons who disturbed the public order. Prison administrators were forbidden to torture or maltreat prisoners or to extort confessions through corporal punishment. Rehabilitation institutions were required, by the law, to treat prisoners humanely. The vast majority of law enforcement officers obeyed those laws and regulations scrupulously and decisive measures were taken immediately if any violations occurred. Reported cases of torture in China were thus pure fabrication.

63. The rumours and allegations spread through leaflets and television programmes that 1.2 million people had been killed in Tibet were entirely false. The truth was that, in the last 40 years, there had actually been an increase in the population of Tibet from 1,274,000 in 1953 to 2,196,000 in 1990.

64. In another attempt to smear the Chinese Government, it was alleged that Tseten Norgye, a detained person, had been blinded as a result of torture. He was, in fact, in very good health, as a recent photograph of him proved. Prisoners in the prison at Lhasa, like those in other Chinese prisons, were treated humanely and diplomats who had recently visited Tibet had been very favourably impressed.

65. Enforced or involuntary disappearances did not occur in China. Nevertheless, thorough investigations had been carried out on the basis of the communications transmitted by the Working Group on Enforced or Involuntary Disappearances. The persons alleged to have disappeared could be classified into the categories of illegal emigrants, persons who had returned home and then left again and convicted criminals.

66. Illegal emigrants were not only allowed to return to China but were also provided with the assistance needed to return to their original places of residence.

67. Persons who, having returned to their original places of residence, left again of their own accord could not be described as having disappeared.

68. Convicted criminals were individuals who had been sentenced to prison for having violated the law and who were currently serving terms of imprisonment. They, too, could not be described as having disappeared.

69. China's judicial organs had recently brought to trial offenders involved in the Beijing turmoil of 1989. That was purely an internal affair of a sovereign State and comments from foreign Governments, organizations or individuals were inappropriate.

70. It had been alleged that, in China, defendants were presumed to be guilty. That was totally unfounded. The judgement of a court was made entirely according to law and was based on the facts of the case. The defendant was not presumed guilty or innocent subjectively in disregard of the facts and the law.

71. Offenders on trial were neither "persons exercising their freedom of expression" nor "prisoners of conscience", but criminals who had committed assault, vandalism, looting, arson, murder, incitement to subversion of the social system established by the Constitution of China, or acts endangering State security.

72. The hearings of the cases had been held in public. According to rule 9 of the Rules of the People's Courts, foreigners could attend, with the permission of the court, public hearings of cases involving matters having foreign implications. When a People's Court heard cases that did not involve foreigners, however, foreigners were not allowed to be present.

73. The Code of Criminal Procedure contained clear provisions on time-limits for criminal proceedings. The public security organ was responsible for investigation, detention and preliminary examination in criminal cases. By law, it could impose compulsory measures on suspects, such as house arrest, detention, arrest, etc. The public security organ investigated and verified the facts of the crime. If it determined that there had been a violation of the law, it investigated the criminal responsibility of the suspect and then transferred the case to the public prosecutor for examination and prosecution. If the circumstances of the case were complex, the time-limit for those operations could be extended with the approval of the relevant authorities.

74. Mrs. SANTOS PAIS (Portugal) said that there was a close relationship between human rights and the administration of justice. The cycle of establishing the law, protecting human rights, complaining about violations and ensuring redress should be clear and readily understandable to all. The Ministry of Justice of her country had therefore launched an important campaign, including two international meetings on the legal protection of human rights, to bring transparency into the administration of justice, to facilitate the access to justice by establishing specific bodies to provide legal assistance and counselling, and to reinforce confidence in the system of justice.

75. Two drafts of new international instruments before the Commission reflected a growing concern at persistent situations of violations of human rights and sought to strengthen the international protection system. The first constituted an important step towards an additional protocol to the Convention against Torture. Following a recommendation by the Special Rapporteur on torture and, in the light of experience with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Government of Costa Rica had proposed (E/CN.4/1991/66) a system of visits to places of detention, of a preventive and non-judicial kind.

76. In view of the importance of the question, it would be useful if Governments, intergovernmental and non-governmental organizations had the opportunity of expressing their views either by written comments or through participation in a future working group. The views of the Special Rapporteur and of the Committee on Torture would be particularly valuable.

77. The other text under consideration was the draft declaration on the protection of all persons from enforced or involuntary disappearances, adopted at the most recent session of the Sub-Commission (E/CN.4/Sub.2/1990/32, annex I). Her delegation did not feel that there was any need for a definition of enforced or involuntary disappearances in a declaration and it recognized the difficulties in achieving one and the danger of thus narrowing the scope of the protection which the international community was trying to ensure. The text as it stood underlined the basic elements of the actual situation with which the Commission was confronted - the fact that enforced or involuntary disappearance constituted an offence against human dignity, the placing of the victim outside the protection of the law, and the strict applicability of the declaration to those acting in an official capacity.

78. The second aspect related to the prevention of disappearances by the training of law enforcement officials; holding persons deprived of their liberty only in officially recognized places of detention where official updated registers were kept; specifying the officials authorized to order detention, conditions for detention and sanctions for refusing to provide information on a person's detention; and ensuring the effective prevention of torture, intimidation or reprisals.

79. Lastly, she wished to stress the importance of the independence and impartiality of the judiciary in connection with the right to lodge complaints, the right to a thorough investigation, and the right to an effective judicial remedy or in ensuring that those involved in an investigation were protected against ill-treatment, intimidation or reprisals.

80. In that connection, she recalled an important decision by the Working Group on Enforced or Involuntary Disappearances to adopt a "prompt intervention procedure" for cases of intimidation, persecution or reprisals requiring immediate action to protect fundamental rights.

81. The question of the independence and impartiality of the judiciary had also been a central concern of the Sub-Commission at its most recent session. In the light of the excellent working paper prepared by Mr. Louis Joinet (E/CN.4/Sub.2/1990/35), an important step had been taken towards consideration of the Sub-Commission's specific role in monitoring the implementation of the Basic Principles on the Independence of the Judiciary.

82. In that context, her delegation recognized the particular value of examining legislative and other measures adopted in the various countries and of considering the factors and difficulties which might interfere with that independence and impartiality.

83. It would be particularly helpful if it were possible to establish an information network, which would ensure the flow of information between member States, NGOs and the United Nations, and give a true and useful picture of situations.

84. Her delegation welcomed the set of texts adopted in the field of justice and human rights at the most recent Congress on the Prevention of Crime and the Treatment of Offenders, most of which would take their place in the next edition of the Compilation of International Instruments. The particular concern for children displayed at the Congress was most welcome.

85. While the examples she had mentioned of the progress made by the standard-setting process was encouraging, there were still, unfortunately, situations where human rights violations occurred systematically and where the rule of law was replaced by the rule of fear and oppression. East Timor was one of those sad examples, where allegations of human rights violations continued to give rise to deep concern, particularly when young people seemed to be the main target.

86. Although access to the territory continued to be restricted, in particular to human rights organizations, various reliable sources indicated the continued existence of intolerable human rights abuses. The sources stated that the situation had worsened since September 1990, when a peaceful demonstration had been held at Dili. Banners and posters calling for independence had been raised and slogans chanted by a group of students. A violent response on the spot by the security forces had been averted, but the tension had mounted and a number of young persons had been detained.

87. In October 1990, new incidents had occurred when pupils in two high schools had allegedly expressed pro-independence sympathies. Clashes between the security forces and the youngsters had led to several more arrests. The detentions seemed to have been carried out quite arbitrarily, and the victims had been held incommunicado in police, military or even unofficial detention centres for hours, days or weeks. In many cases, their whereabouts remained unknown.

88. Most had undergone severe beatings, ill-treatment or various forms of torture before being released without any formal charge. It was in that context that urgent appeals had been made by the Special Rapporteur on torture to the Government of Indonesia, which had denied that any torture had taken place. However, a document on human rights practices in 1990 issued by the United States Department of State recognized that youths detained in East Timor in connection with the civil unrest were beaten, sometimes severely, ,nd in some cases subjected to more serious physical treatment.

89. According to the report, officials had publicly acknowledged and condemned police brutality and unacceptable prison conditions. In 1990, however, there were no known instances of officials being punished for mistreatment of political prisoners or detainees. Pre-trial mistreatment of detainees to obtain confessions was reportedly common. According to the same report, at least 15 civilians had been killed in East Timor by the military in 1990.

90. Amnesty International reported that detainees in East Timor had been killed in custody or died from injuries after being tortured. It expressed concern at a pattern which had emerged in the past two years of short-term detention, ill-treatment and torture of alleged political opponents of Indonesian rule. That same atmosphere was reflected in a recent report of the Working Group on Enforced or Involuntary Disappearances.

91. Mr. STIGLICH (Peru) said that the new Government of his country had been elected in a two-stage process which had also resulted in the election of a new Parliament and, for the first time, regional governments. More than 85 per cent of the electorate had voted, including residents in areas where the terrorists of the Sendero Luminoso (Shining Path) and the Movimiento Revolucionario Tupac Amaru (Tupac Amaru Revoluntary Movement) (MRTA) had

threatened persons exercising their right to vote. The Peruvian people had thus demonstrated its faith in democracy despite the terrorist violence which sought to destroy it, the restrictions of the economic crisis and the errors of their leaders and politicians.

92. On assuming office on 28 July 1990, President Fujimori had told the National Congress that one of his Government's fundamental tasks would be to defend total respect for human rights in a situation of violence where terrorism had already resulted in more than 18,000 deaths. He had said that a humanist concept of politics should include from the outset the responsibility to protect the human rights and fundamental freedoms of the people, respecting cultural and ethnic differences but without any discrimination whatever.

93. It was the specific policy of the Peruvian authorities to reaffirm the full force of legislation concerning civil freedoms and, more particularly, full respect for human rights. Such respect and defence were all the more important in view of the fact that the terrorist violence which Peru had been experiencing since 1980 made it necessary for the State to be characterized by both its respect for legality and justice and its legitimate fight against the terrorist gangs. Indeed, the terrorist violence which continued to threaten democracy in Peru could no way justify the systematic or sporadic violation of human rights and a just and effective anti-subversive campaign could be carried out only in accordance with the principles enshrined in the Constitution and the laws of the land.

94. He wished to emphasize that, in Peru, the State did not practise a policy of violation of human rights. The President of the Republic, the Government and the opposition were all agreed on that point. Nevertheless, there was a shared will to respond to the aggression of terrorism with an action that was firm but respectful of human rights. However, some violations had taken place and, when they were committed by the police, firm steps were taken to bring those responsible to justice. For Peruvians, it was not only a legal matter but also an ethical and moral imperative.

95. The President had been very clear in stating that, where human rights violations had occurred, the perpetrators would be punished whether they were attacking society and democracy or had a duty to defend them. He had also stated that a new anti-subversive strategy had been initiated which sought to strengthen intelligence actions with a view to dismantling terrorism at the very centre of its main apparatus and decision-making machinery. The new strategy had begun to produce positive results.

96. In Peru, democracy also made it possible to have another consensus between the State and society, and between the Government and the opposition. He was referring to a consensus to prohibit national security doctrines which, in past decades, had been responsible for gross violations of human rights in Latin America.

97. With a view to investigating existing complaints more rapidly and with the full support of the State, the Government intended to set up a national human rights commission under a presidential commissioner with sufficient authority to carry out a work of protection and promotion which excluded no sector of society.

98. With regard to the latest report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20), his delegation wished to make it clear that the violence which was currently occurring in his country had been generated by a continuing wave of destruction, criminal acts and terror unleashed by two subversive groups, the Sendero Luminoso and MRTA. In a legitimate response to those outbreaks of violence, the armed forces had been obliged to intervene in order to maintain and guarantee public order. Unfortunately, the fight thus undertaken between the forces of order and an invisible enemy which hid among an intimidated civilian population had frequently produced victims of error and excess.

99. At the same time, the subversives not only murdered police officers, soldiers and innocent peasants but also "recruited" by force many men who could be regarded as missing persons, and his delegation deemed it inappropriate to state that the armed forces alone were responsible for most of the disappearances mentioned in the report of the Working Group.

100. Steps were being taken to provide the necessary information from the State bodies and from the armed forces in order to be able to give an immediate reply to complaints and to determine the whereabouts of persons who were said to have disappeared. It should also be pointed out that, as stated in the report, the number of disappearances, in 1990, had been half the figure reported in 1989.

101. With regard to the most recent report of the Special Rapporteur on torture (E/CN.4/1991/17), his delegation wished to state that, as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, Peru, by its legislation, both prohibited and punished such practices.

102. Lastly, he wished to mention two Acts which had recently been adopted by the Peruvian Congress. The first indicated precisely how the judiciary should proceed with regard to the recourse of habeas corpus so as to ensure its effective implementation, while the second Act suspended Decree 171-90, under which all cases concerning the crime of terrorism had been dealt with by military courts.

103. Mr. LEE (Observer for the Republic of Korea), speaking in exercise of the right of reply, said he regretted having to point out that the representative of the Commission of the Churches on International Affairs had taken advantage of the fact that the term "prisoner of conscience" had yet to be defined and had given a false impression of the Republic of Korea.

104. Since the inauguration in 1986 of the current Korean Government, wide-ranging reforms and innovative measures had been adopted with a view to promoting respect for fundamental freedoms and human rights and laying the foundation for democratic development. The Government's accession to the two International Covenants on Human Rights and the Optional Protocol were among the significant steps taken to promote human rights and fundamental freedoms. The persons referred to in the statement by the speaker he had mentioned had violated domestic law and could in no way be regarded as prisoners of conscience.

105. Mr. RASAPUTRAM (Observer for Sri Lanka), speaking in exercise of the right of reply, said that his Government had categorically stated that it shared the concern expressed both nationally and internationally regarding reports of alleged disappearances in Sri Lanka. It had accordingly adopted a series of measures both nationally and with international assistance, which included the invitation extended by it to the Working Group on Enforced or Involuntary Disappearances to visit Sri Lanka. His Government had provided and would continue to provide the fullest information to United Nations monitoring mechanisms in that regard.

106. His delegation had, however, to reject the assertions of the representative of International Educational Development, which were based on unsubstantiated allegations, including his attempts to cast aspersions on bilateral relations between two sovereign States. In making the statement that the Government of Sri Lanka should be encouraged to negotiate a cease-fire, he had probably been unaware that the Government's efforts at negotiations over more than a year had been discarded by the terrorist group concerned and that two cease-fires subsequently arranged by the Government had been blatantly rejected by the same group.

107. However, his Government remained committed to a political solution to the problems it faced and was continuing to negotiate and work with all Tamil political parties and groups genuinely interested in negotiations. It was prepared to negotiate with even the most intransigent terrorist group, the LTTE, if it was willing to engage in serious negotiations with the Government, other Tamil groups and political parties and state that it was against the use and possession of arms.

108. The representative of another non-governmental organization, Liberation, had referred to what he called the occupation by Government forces of a small area in the north of Sri Lanka. His Government totally rejected those assertions, since that absurd notion sought to equate the duty of a democratically elected sovereign Government to maintain law and order with the concept of occupation. The security forces were called upon to take action against a single terrorist group which sought to subvert the country's territorial integrity and to deny the people of their own community the right to elect their representatives.

109. That terrorist group had not only continued its policy of ethnic segregation and the elimination of rivals but had also prevented opposing Tamil parties from engaging in democratic politics in the area. The security forces would not be required to take action against those terrorist elements if they agreed to negotiate a political solution together with other political parties and without recourse to armed violence.

110. In conclusion, he said that his Government had undertaken a massive humanitarian effort to alleviate the hardships faced by civilians with the assistance of ICRC, UNHCR and national and international non-governmental organizations. He noted that the speakers in question had not referred to those efforts or to the serious disruption of relief efforts caused by the terrorist groups themselves.

The meeting rose at 6 p.m.